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OFFICE OF PETITIONS

K&L Gates LLP
1900 MAIN STREET, SUITE 600
IRVINE CA 92614-7319

In re Patent No. 7,622,107 : DECISION ON REQUEST FOR
HORWITZ et al. : RECONSIDERATION OF
Issue Date: November 24, 2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/595,385 : NOTICE OF INTENT TO ISSUE
Filed: April 13, 2006 : CERTIFICATE OF CORRECTION
Atty. Docket No. 1951326-00019:

This is a decision on the petition filed on January 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred thirty-five (335) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **three hundred eighty (380) days**.

The Office agrees with patentee that the provisions of 35 U.S.C. 154(b) related to adjustment of patent term apply as this is an international application filed after May 29, 2000. Accordingly, the Office concurs that patentees are entitled to a period of adjustment of 365 days, pursuant to 37 CFR 1.702(a)(1), for the mailing of the Restriction Requirement on June 12, 2009, 14 months and 365 days, after the fulfillment of the requirements of 35 U.S.C. 371 on April 13, 2006. A period of adjustment for Office delay of 365 days will be entered. Accordingly, A delay is 365 days.

The Office also agree that patentee should have been assessed a delay of 30 days, pursuant to 37 CFR 1.704(b), for the filing of a reply on May 29, 2009, three months and 30 days after the mailing of the final Office action. A period of reduction of 30 days will be entered. Accordingly, applicant delay is 30 days.

Lastly, patentee is entitled to a period of adjustment pursuant to 37 CFR 1.702(b). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on April 14, 2009, and ends on May 28, 2009, the day before the RCE was filed, and is 45 days. See 35 U.S.C. 154(b)(1)(B)(i). Accordingly, B delay is 45 days.

The patent term adjustment is 380 days (365 days of A delay + 45 days of B delay - 30 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The requisite \$200.00 fee set forth in 37 CFR 1.18(e) will be charged to the Deposit Account as authorized.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred eighty (380) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,622,107 B2

DATED : Nov. 24, 2009

DRAFT

INVENTOR(S) : HORWITZ et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 0 days

Delete the phrase "by 0 days" and insert – by 380 days--